STATE CONTROL OVER FOREIGN CORPORATIONS ENGAGED IN BOTH INTERSTATE AND INTRASTATE COMMERCE.—The United States Supreme Court has from the very first recognized the principle that a State has the absolute right to exclude foreign corporations, which are engaged in intrastate commerce only, entirely from its borders.[1] Since this power is absolute and arbitrary the State may impose any condition it chooses, whether reasonable or unreasonable, as a condition precedent to the admission of a foreign corporation.[2] This of course is subject to the exception that the corporation cannot be required to surrender a right or privilege conferred upon it by the federal Constitution or laws.[3] Therefore, a condition that no case shall be removed to the federal courts by the corporation was declared void and the corporation was allowed to remove such cases.[4] But while such conditions are void, the State may provide that a foreign corporation which removes a case shall forfeit the right to continue business in the State.[5] These conditions upon the privilege of doing business within the State are often the payment of a license fee, or an excise tax and since the question of reasonableness and discrimination are not involved, they may be of any amount and measured by any standard.[6]

It is also an established principle that the power of Congress over interstate commerce is supreme under the Constitution.[7] Therefore a State cannot exclude a foreign corporation engaged in interstate commerce, nor impose any conditions upon its admission.[8] Nor does it make any difference in what guise or form such condition or regulation may be clothed, for the courts will consider its nature and effect and if it bears upon interstate commerce so directly as to amount to a regulation its form or name will not cure its invalidity.[9]

The cases where the corporations are engaged in both intrastate and interstate business have given rise to more or less confusion. The decisions which first involved the determination of this point held uniformly that because a foreign corporation is engaged in in-

---

[1] Bank of Augusta *v.* Earle, 13 Pet. (U. S.) 519; Crutcher *v.* Kentucky, 141 U. S. 47; Security Mut. Life Ins. Co. *v.* Prewitt, 202 U. S. 246.

[2] Paul *v.* Virginia, 8 Wall. (U. S.) 168; Horn Silver Min. Co. *v.* New York, 143 U. S. 305.

[3] Home Ins. Co. *v.* Morse, 20 Wall. (U. S.) 445; Hammond Packing Co. *v.* Arkansas, 212 U. S. 322.

[4] Barron *v.* Burnside, 121 U. S. 186; Southern Pac. Co. *v.* Denton, 146 U. S. 202.

[5] Doyle *v.* Insurance Co., 94 U. S. 535; Security Mut. Life Ins. Co. *v.* Prewitt, *supra.*

[6] Pembina Silver Min. Co. *v.* Pennsylvania, 125 U. S. 181; National Council *v.* State Council, 203 U. S. 151.

[7] Galveston Ry. Co. *v.* Texas, 210 U. S. 217; Simpson *v.* Shepard, 230 U. S. 352.

[8] Pensacola Tel. Co. *v.* Western Union Tel. Co., 96 U. S. 1; Crutcher *v.* Kentucky, *supra;* International Text Book Co. *v.* Pigg, 217 U. S. 91.

[9] Ashley *v.* Ryan, 153 U. S. 436; Stockard *v.* Morgan, 185 U. S. 27; Asbell *v.* Kansas, 209 U. S. 251.

terstate business along with the intrastate does not prevent the State from regulating the intrastate business, or from prohibiting it entirely.[10] The State still has the right to regulate or tax the intrastate part of the business so long as such regulations or conditions do not refer to or are not imposed upon the business of the corporation which is interstate.[11] A foreign corporation has no absolute right to engage in intrastate business because at the same time it is engaged, and perhaps with the same instrumentalities, in doing an interstate business.[12] The corporation has the option either to submit to the terms and conditions or to abandon the intrastate business, therefore such regulation is not void as an interference with interstate commerce.[13]

It would seem that this line of cases had established the doctrine that a State can regulate and even prohibit altogether the intrastate business of a foreign corporation even though engaged at the same time in interstate business. The Kansas cases,[14] however, would seem to limit this doctrine somewhat. These cases had under consideration a Kansas statute which provided that before a foreign corporation, although engaged in interstate business, should be allowed to do local business, it should pay a fee of one tenth of one per cent on the first $100,000 of its authorized capital stock, one-twentieth of one per cent on the next $400,000, and for each million or major part thereof $200. This statute was declared unconstitutional on the ground of being in restraint of interstate commerce, the fee being considered as a tax upon the interstate business as well as intrastate. The court, however, recognized the principle discussed above, that because a foreign corporation is engaged in interstate business does not exempt it from regulation in respect to its intrastate business and distinguish it from those cases. The court said "That the Western Union Telegraph Co. is engaged in both interstate and intrastate commerce is no reason, in itself, why Kansas may not, in good faith, require it to pay a license tax strictly on account of local business done by it in that State. But it is altogether a different thing for Kansas to deny it the privilege of doing such local business, beneficial to the public, except on condition that it shall first pay to the state a given per cent of all its capital stock, representing all its property, wherever situated, and all its business in and outside of the State." [15] The fact that in

[10] Western Union Tel. Co. *v.* Massachusetts, 125 U. S. 530; Postal Tel. Co. *v.* Charleston, 153 U. S. 692; Osborne *v.* Florida, 164 U. S. 650; Allen *v.* Pullman Palace Car Co., 191 U. S. 171; U. S. Exp. Co. *v.* Minnesota, 223 U. S. 335, and cases collected there.

[11] Osborne *v.* Florida, *supra;* Crutcher *v.* Kentucky, *supra;* Western Union Tel. Co. *v.* Gottlieb, 190 U. S. 412.

[12] Allen *v.* Pullman Palace Car Co., *supra;* Western Union Tel. Co. *v.* Richmond, 224 U. S. 160.

[13] Pullman Co. *v.* Adams, 189 U. S. 420; Kehrer *v.* Stewart, 197 U. S. 60.

[14] Western Union Tel. Co. *v.* Kansas, 216 U. S. 1; Pullman Co. *v.* Kansas, 216 U. S. 56.

[15] Western Union Tel. Co. *v.* Kansas, *supra.*

levying this tax on the capital there was no effort or attempt to discriminate between the capital used in interstate business and that in intrastate indicates that the fee was a mere device to reach and burden the interstate commerce of the corporation, which in itself distinguishes it from the cases first considered.

Later cases, however, have held that a State has the power to exact of a foreign corporation a license fee or excise tax for the privilege of doing intrastate business, although the corporation was primarily organized for and engaged principally in interstate business.[16] They are distinguished from the Kansas cases by the fact that the tax was laid exclusively on property and capital used in the intrastate business. The recent case of *Baltic Mining Co.* v. *Massachusetts,* 34 Sup. Ct. 15, has again drawn the distinction between these two classes of cases. The court held that a privilege tax imposed by the State upon the purely local and domestic business of a foreign corporation engaged in both intrastate and interstate business is valid and not an interference with commerce, if such local business is separate from and not in such close connection with the interstate business that it cannot be abandoned without seriously impairing the interstate business. This view seems to be the one best supported by the authorities.

CORROBORATION OF TESTIMONY BY PRIOR STATEMENT.—Before the eighteenth century it was generally held that the evidence of a witness might be invalidated or confirmed by evidence of statements made by him at a prior time.[1] But in the eighteenth century the courts began drawing away from this doctrine, for the reason that it was improper to allow testimony given under oath to be overcome by statements made under any and all circumstances, just as it was improper to attempt to support testimony by mere evidence of repetition, and in 1783 it was held that such evidence was inadmissible.[2] In this country the general rule that such evidence is inadmissible was early adopted by the courts,[3] but great conflict has arisen over the exceptions, if any, to be recognized to it.[4]

I. Where the testimony of the witness has been impeached on the ground of inconsistent statements made before the trial, the de-

[16] Williams *v.* Talladega, 226 U. S. 404; Ewing *v.* Leavenworth, 226 U. S. 464.

[1] See Lutterell *v.* Reynell, 1 Mod. 282; 2 HAWKINS, PLEAS OF THE CROWN, 6 ed., 606; 1 GREENLEAF, EV., 16 ed., 605.

[2] Rex *v.* Parker, 3 Doug. 242. Butler, J., in laying down the rule said simply that "what a witness said not upon oath would not be admitted to confirm what he said upon oath; and that the case of Lutterell *v.* Reynell, *supra,* was not now law."

[3] Ellicott *v.* Pearl, 35 U. S. (10 Peters) 412, 439. However, it was recognized in this case that exceptions must be made to the general rule. State *v.* Parrish, 79 N. C. 610.

[4] 2 WIGMORE, EV., 1123; 3 ENCYC. EV. 740.